

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

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In the Matter of:

Borough of Dupont
600 Chestnut Street
Dupont, PA 18641

Respondent.

Proceeding Under Section 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)

Docket No. CWA-03-2014-0148 DN

FINDINGS OF VIOLATION
AND
ORDER FOR COMPLIANCE

I. STATUTORY AUTHORITY

The following Findings of Violation and Order for Compliance ("Order") are issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "the Act"). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has redelegated it to the Director of the Water Protection Division of EPA Region III.

II. FINDINGS

A. NPDES and MS4 Programs

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

3. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

4. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." *Id.* § 122.26(b)(13).

24. The 2003 MS4 Permit authorizes discharges of storm water from the Dupont Borough MS4 to the Collins Creek, Lidy Creek, Mill Creek, Lackawanna River and its tributaries, but only in accordance with the conditions of the Permit.

25. Upon information and belief, Respondent chose to implement the Protocol.

26. Therefore, the Protocol and its underlying requirements were incorporated into the 2003 MS4 Permit coverage for Dupont Borough MS4.

27. On March 4-7, 2013, duly-authorized EPA representatives conducted a review of the Dupont Borough MS4 program's annual report (hereinafter referred to as "the Review").

III. VIOLATIONS

Minimum Control Measure #2: Public Participation/Involvement

30. Federal regulations at 40 C.F.R. § 122.34(b)(2), the 2003 MS4 Permit (Part A.2) and the Protocol (pp. 8-13) require the Respondent to develop and implement a public involvement and participation plan.

31. The Review revealed that Respondent had failed to comply and/or to document its compliance with Federal regulations and the 2003 MS4 Permit (including the Protocol) by not developing and/or implementing a public involvement and participation plan.

32. Respondent's failure to comply and/or to document its compliance with the Federal regulations and the 2003 MS4 Permit, including the Protocol, by failing to develop and implement a public involvement and participation plan violates the 2003 MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Minimum Control Measure #6: Pollution Prevention/ Good Housekeeping For Municipal Operations

33. Federal regulations at 40 C.F.R. § 122.34(b)(6) and the 2003 MS4 Permit (Part A.2) and the Protocol (pp. 27-31) require the Respondent to implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations through, *inter alia*, the following activities: developing and implementing a comprehensive pollution prevention program for municipal operations, focusing particularly on vehicle maintenance, fueling and washing, maintenance of stormwater facilities and employee training; and an operations and maintenance training program for municipal employees.

34. The Review revealed that Respondent had failed to comply and/or to document its compliance with the Federal regulations and the 2003 MS4 Permit, including the Protocol, by not implementing an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations through, *inter alia*, the following activities: developing and/or implementing a comprehensive pollution prevention program for municipal operations, focusing particularly on vehicle maintenance,

fueling and washing, maintenance of stormwater facilities and employee training; and/or an operations and maintenance training program for municipal employees.

35. Respondent's failure to comply and/or to document its compliance with the Federal regulations and the 2003 MS4 Permit, including the Protocol, by failing to implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations violates the 2003 MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. ORDER FOR COMPLIANCE

Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any condition or limitation which implements section 1342 of the Act, he shall issue an order requiring such person to comply with such condition or limitation.

Therefore, this 29th day of MAY, 2014, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. §1319(a), to conduct the following activities:

Within thirty (30) days of receipt of this Order, Respondent shall:

- a. Within 30 days of the effective date of this Order, provide additional evidence of compliance absent from the Annual Report to the extent that inadequate documentation is alleged in this Order; and
- b. Within 30 days of EPA's request, submit a work plan and schedule to achieve compliance with all Minimum Control Measures and/or Best Management Practices which are noncompliant in terms of the Federal regulations and Permit as alleged in this Order. Respondent shall submit the additional compliance evidence work plan and/or schedule to:

Peter Gold
NPDES Enforcement Branch (3WP42)
Water Protection Division
U.S. Environmental Protection Agency
1650 Arch St, Philadelphia, PA 19103

V. GENERAL PROVISIONS

36. Issuance of this Order shall not be deemed an election by the EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

37. Respondent's compliance with the terms of this Order shall not constitute compliance with the Clean Water Act or any other Federal, State or local law, regulation

ordinance or permit. Nor does this Order constitute a waiver or modification of the terms or conditions of any issued permit.

38. Violation of the terms and conditions of this Order constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d). In addition, Section 309(c) provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

VI. JUDICIAL REVIEW

Respondent may seek federal judicial review of the Order for compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review. Respondent is free to seek counsel from an attorney regarding its response.

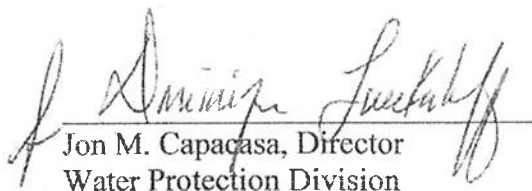
VII. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

VIII. EFFECTIVE DATE

The effective date of this Order shall be the date it is received by the Respondent.

Date: _____


Jon M. Capacasa, Director
Water Protection Division